MANOHARAN DORASAMY

v.

KETUA POLIS IBU PEJABAT KONTINJEN POLIS SEREMBAN, NEGERI SEMBILAN & ANOR

COURT OF APPEAL, KUALA LUMPUR
SHAIK DAUD ISMAIL JCA
MOKHTAR SIDIN JCA
SAARI YUSOFF JCA
[CIVIL APPEAL NO: N-01-302-96]
29 NOVEMBER 2001

ROAD TRAFFIC: *Registration - Right to possession - Whether appellant had right to possession of vehicle - Whether appellant registered owner of vehicle - Whether Director General or Director has power to determine ownership of vehicle or only to correct particulars in registration book - Road Transport Act 1987, s. 12(1)*

CRIMINAL PROCEDURE: *Disposal of property - Detention of property, right of police in respect of - Detention of vehicle after 48 hours without being referred to magistrate - Whether detention illegal - Whether appellant lawful owner of vehicle - Criminal Procedure Code (FMS Cap 6), s. 413 - Police Act 1967, s. 24(4)*

The appellant was the registered owner of a vehicle ('the said vehicle') which, on 28 April 1994, was seized and kept by the police in order to determine whether the engine and chassis numbers had been tampered with. Despite the police being unable to determine the original owner of the said vehicle or whether it had been stolen, they continued to detain the said vehicle until 23 January 1995 when it was released to the appellant under a bond. The appellant applied for a declaration that he was the beneficial owner of the said vehicle, and also for damages that he had suffered as a result of the seizure and detention of the said vehicle. The learned High Court judge dismissed the appellant's application, resulting in this appeal.

Held:
Per Mokhtar Sidin JCA

[1] Although there was suspicion regarding the genuineness of the particulars stated in the registration book because of the tampering of the engine and chassis numbers, there was no request made under s. 12(1) of the Road Transport Act 1987 by the Director or Director General to the appellant to produce the registration book, whereby the particulars in

that book could be corrected or amended. According to the registration book, the appellant is the registered owner of the said vehicle and would remain as such until the registration book is amended or corrected. (pp 336 h-i & 337 a)

[2] The said vehicle had been detained by the police for more than 48 hours after it was seized, and after the 48 hours had expired, the police did nothing to legalise the detention under s. 413 of the Criminal Procedure Code as they did not produce the said vehicle before the magistrate for him to make the necessary order. As such, the continued detention of the said vehicle after 48 hours under s. 24(4) of the Police Act 1967 was illegal. (p 335 h-i)

[2a] There was uncontradicted evidence that the nature of the appellant's work required extensive travel, and that he had suffered damages as a result of the unlawful detention of the said vehicle. (p 337 h-i)

[Appeal allowed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu adalah tuanpunya berdaftar sebuah kenderaan ('kenderaan tersebut') yang mana, pada 28 April 1994, telah dirampas dan disimpan oleh polis untuk menentukan sama ada enjin dan nombor casis telah dikacau-ganggu. Meskipun polis tidak dapat menentukan tuanpunya sebenar kenderaan tersebut atau sama ada ianya telah dicuri, mereka masih terus menahan kenderaan tersebut sehingga 23 Januari 1995 bilamana ianya telah dilepaskan kepada perayu di bawah satu bon. Perayu telah merayu untuk mendapatkan pengisytiharan bahawa beliau adalah tuanpunya benefisial kenderaan tersebut, dan juga bagi gantirugi yang telah dialami oleh beliau akibat penyitaan dan penahanan kenderaan tersebut. Hakim Mahkamah Tinggi yang bijaksana telah menolak permohonan perayu, mengakibatkan rayuan ini.

Diputuskan:
Oleh Mokhtar Sidin HMR

[1] Meskipun terdapatnya keraguan mengenai sifat ketulenan butir-butir yang dinyatakan dalam buku pendaftaran tersebut kerana kacau-ganggu nombor casis dan enjin tersebut, tidak terdapat permintaan yang dibuat di bawah s. 12(1) Akta Pengangkutan Jalan 1987 oleh Pengarah atau Ketua Pengarah kepada perayu supaya mengemukakan buku pendaftaran tersebut, di mana butir-butir dalam buku itu boleh diperbetulkan atau dipinda. Menurut buku pendaftaran tersebut, perayu adalah tuanpunya berdaftar bagi kenderaan tersebut dan akan kekal sedemikian sehingga buku pendaftaran tersebut dipinda atau diperbetulkan.

[2] Kenderaan tersebut telah ditahan oleh polis selama lebih daripada 48 jam selepas ianya dirampas, dan selepas 48 jam itu telah luput, polis tidak melakukan apa-apa untuk mengesahkan penahanan tersebut di bawah s. 413 Kanun Prosedur Jenayah kerana mereka telah tidak mengemukakan kenderaan tersebut di hadapan majistret untuk beliau membuat perintah yang perlu. Oleh yang demikian, penahanan berterusan kenderaan tersebut selepas 48 jam di bawah s. 24(4) Akta Polis 1967 adalah tidak sah.

[2a] Terdapat keterangan yang tidak bercanggahan bahawa sifat pekerjaan perayu memerlukan perjalanan yang ekstensif, dan bahawa beliau telah mengalami gantirugi akibat penahanan kenderaan tersebut yang tidak sah di sisi undang-undang.

[Rayuan dibenarkan.]

Legislation referred to:
Criminal Procedure Code, s. 413
Federal Constitution, art. 13(1)
Hire-Purchase Act 1967, s. 7(1)(a)
Police Act 1967, s. 24(4)
Road Transport Act 1987, ss. 8, 10, 12(1)

For the appellant - D Kalaimany; M/s Kalai & Partners
For the respondents - Mary TS Lim (Othman Abdullah) State Legal Adviser's Chambers

Reported by Suresh Nathan

JUDGMENT

Mokhtar Sidin JCA:

The appellant is the registered owner of a vehicle No. NAJ 1912, a Honda Accord 2.0 EX(i) (hereinafter referred to as "the said vehicle"). He bought the said vehicle for RM70,000. He paid RM10,000 and for the balance of RM60,000 he took a loan from Hong Leong Finance. When the appellant paid the loan in full, he was registered as the owner of the said vehicle on 4 February 1994. On 28 April 1994 the police seized the said vehicle and kept it at the Petaling Jaya Police Station for the purpose of further investigations in order to enable the chemist to determine whether the engine and chassis numbers had been tampered to enable the police to obtain further particulars from Kah Motors Company in respect of the said vehicle. From the evidence there was no dispute that the said vehicle originated from Sabah. After it was brought into West Malaysia, it was registered at the Jabatan Pengangkutan Jalan Negeri Sembilan with the registration number NAJ 1912. Later the Jabatan Pengangkutan Jalan Negeri Sembilan discovered that there

was a syndicate falsifying and forging several applications whereby vehicles registered in Sabah were brought into West Malaysia and given new registration numbers. On discovering this the said department lodged a police report and blacklisted all the vehicles, one of which is the said vehicle. After examination, the chemist confirmed that the chassis and the engine numbers had been tampered but could not establish the identity of the said vehicle or its origin. From the evidence, the police was unable to determine the original owner of the said vehicle or whether the said vehicle had been stolen. Despite that the police continued to detain the said vehicle until 23 January 1995 when the said vehicle was released to the appellant under a bond.

On 6 May 1995, the appellant took out an originating summons seeking the following orders:

(1) A declaration that the appellant is the beneficial owner of the said vehicle and that the two respondents have no right to interfere with the right of the appellant under s. 7(1)(a) Hire-Purchase Act 1967 and also under art. 13(1) of the Federal Constitution and the Road Transport Act 1987 and all the regulations thereunder. Pursuant to that order, the appellant prayed for an order that the said vehicle be registered in the name of the appellant in accordance with para. (a) of s. 8 of the Road Transport Act.

(2) Secondly, the appellant seeks a declaration that the registration of the said vehicle by the second respondent with registration number WDB 1898 with engine number MA 1A5-571289 and chassis number CB 3-7036281 made on 10 August 1992 under s. 10 of the Road Transport Act 1987 is binding on the second respondent.

(3) The appellant also prayed for an order that the second respondent issued a valid road tax with the registration number NAJ 1912.

(4) The respondents pay damages for depriving the appellant of his right under art. 13(1) of the Federal Constitution and the senior assistant registrar be ordered to assess the damages.

In his affidavit in support of the application, the appellant deposed that on 24 January 1994 a person by the name of Dewarajoo a/l Gurusamy had shown him the said vehicle and the appellant agreed to buy the said vehicle. On 25 January 1994, the appellant took the said vehicle to a workshop at Jalan Yong Shook Lin, Petaling Jaya where the said vehicle was examined by a mechanic in the presence of the appellant where it was established that the engine number to be MA 1A5-571289 and the chassis number to be CB 3-7036281 which is the same as the one entered in the registration book of the said vehicle. On that confirmation the appellant decided to purchase the said vehicle

at RM70,000. On 27 January 1994, the appellant paid Dewarajoo RM10,000, upon which Dewarajoo handed the registration book and the said vehicle. In the registration card it is recorded that Dewarajoo bought the car from F & C Motor Sdn. Bhd. For the balance of RM60,000 the appellant got a loan from Hong Leong Finance secured by a hire purchase agreement dated 2 February 1994. The appellant's name was registered as the owner of the said vehicle in the registration book. Before releasing the loan Hong Leong Finance made a search with the Road Transport Department, Seremban, Negeri Sembilan to confirm the details as stated in the registration book. The appellant had repaid the loan to Hong Leong Finance. On 28 April 1994, at about 11pm a party of police officers went to the appellant's house at No. 10 Jalan 5/33, Petaling Jaya, Selangor and seized the said vehicle. The appellant was told by the police that the said vehicle was suspected to be a stolen vehicle. The appellant informed the police that he bought the said vehicle from Dewarajoo. He then led the police party to Dewarajoo's house where the said Dewarajoo was arrested. At the Petaling Jaya Police Headquarters, the appellant was again told that the said vehicle was suspected to be a stolen vehicle.

On 4 October 1994, the appellant's solicitors wrote to the police requesting the police to release the said vehicle to the appellant under s. 413 of the Criminal Procedure Code or s. 24 of the Police Act on the ground that he was a *bona fide* purchaser for good value. The first respondent refused to release the said vehicle. It was stated that as a result of the seizure and the detention of the said vehicle, the appellant suffered damages. The appellant gave evidence that the nature of his employment required him to travel and because the said vehicle had been detained, he was deprived of the use of the said vehicle. In addition, he had to pay the monthly instalment of RM1,375 to Hong Leong Finance for the loan. The appellant gave evidence that he made a search at the Road Transport Department, Wilayah Persekutuan where it was confirmed that the engine and the chassis numbers were the same as the one written in the registration book handed to him. Appellant further stated that on his own he had done everything possible to ensure that the said vehicle was not a stolen property. He went on to say that the second respondent was to be blamed for issuing the registration book with the details and particulars as stated in the registration book. The Road Transport Department, Sabah and Negeri Sembilan were equally to be blamed for not carrying a proper inspection of the said vehicle and not being able to discover that the engine and chassis numbers had been tampered.

In reply, the respondents stated that the appellant is not entitled under the law to apply to be the beneficial owner of the said vehicle. The reasons being:

(a) On 20 September 1993, F & C Motor Sdn. Bhd. applied to have the registration number of the said vehicle be changed from SS 9554 C to the present registration number.

(b) The second respondent found that the application and the documents supporting the application were in order and duly registered the said vehicle with the present registration number NAJ 1912.

(c) In that application the company executed an indemnity letter to indemnify the second respondent from any liability in respect of that application. Indemnities were also given by the individual owners every time there was a change in name of the registered owner appearing in the registration book.

(d) The said company also made a statutory declaration that they were the legal owner of the said vehicle.

(e) After the registration, the second respondent discovered there was a syndicate of falsifying documents involving vehicles registered in Sabah.

(f) The second respondent then lodged a police report and blacklisted all the vehicles including the said vehicle.

(g) The first respondent admitted confiscating and detaining the said vehicle for investigation. As a result of that investigation the police found that the engine and chassis numbers had been tampered.

It was contended by the respondents that since the appellant is not the lawful owner of the said vehicle, the said vehicle cannot be released to the appellant. It was further contended by the respondents that s. 413 of the Criminal Procedure Code and s. 24 of the Police Act 1967 provide for the release of the said vehicle to the lawful owner.

The learned judge who heard the application dismissed the appellant's application. In his judgment the learned judge said:

> Akibat dari pemalsuan nombor enjin motokar itu maka identiti sebenar kereta itu tidak diketahui. Siapa pemilik asalnya atau sama ada motokar itu telah digelapkan atau dicuri juga tidak diketahui sehingga pihak polis menamatkan siasatannya nanti. Mahkamah enggan membuat sebarang perisytiharan mengenai motokar itu apabila terdapat alternative remedy seperti yang diperuntukkan di bawah Seksyen 413 Kanun Acara Jenayah di mana seorang Majistret boleh membuat enquirynya dan melupuskan motokar itu kepada Plaintif dengan terma tertentu atau di bawah Seksyen 12(1) Akta Pengangkutan Jalan di mana Ketua Pengarah atau Pengarah boleh memeriksa motokar itu dan menentusahkan maklumat sebenar mengenainya dan membuat pembetulan kepada Kad

Pendaftaran kereta itu. Plaintif telah membeli kereta itu dari pemilik terdahulu dan Plaintif berhak mendapatkan good title tetapi Plaintif mendapat pemilikan/ motokar yang cacat. Oleh hal yang demikian Plaintif mempunyai remedi terhadap pemilik terdahulu tapi Plaintif belum mengambil tindakan sewajarnya.

Dalam hal keadaan di atas Mahkamah ini enggan memberi perintah sebagaimana dipohon kerana siasatan polis masih berjalan dan ada kemungkinan akan timbul tuntutan yang berlawanan antara Plaintif dan pihak lain yang ada kepentingan terhadap motokar itu. Mahkamah menolak permohonan Plaintif dengan kos.

Being dissatisfied with that decision the appellant appealed to this court. From the record, the ground of judgment was given on 25 November 1996 and this appeal came up before us on 21 September 2000, almost some four years later. We take note of this because if there is any police investigation it should be completed by the time this matter came up for hearing before us.

The learned counsel for the appellant contended that the appellant had been deprived of his property not in accordance with the law. It was submitted that a motor vehicle could only be seized and detained by the police pursuant to s. 24(4) of the Police Act or s. 413 of the Criminal Procedure Code. Section 24(4) of the Police Act provides:

Any police officer may cause any vehicle or vessel, which he has reasonable grounds to suspect has been used in the commission of an offence against any law in force or to be evidence of the commission of any such offence, to be moved to the nearest Police District headquarters or other convenient place, and the Officer in Charge of such Police District may thereupon cause such vehicle or vessel there to be detained, pending enquiries, for a period not exceeding forty eight hours, or if, within that period, there are commenced proceedings in respect of any such offence in which the vehicle or vessel is liable to forfeiture under any law or may properly be produced in evidence, until the final determination of those proceedings:

Provided that the Officer in Charge of such Police District may, notwithstanding the provisions of this subsection, direct the release of any such vehicle or vessel where he is satisfied that the owner or person in charge of such vehicle or vessel will duly produce such vehicle or vessel before the court when required, and for such purpose may require such owner or person to execute such bond or deposit such security as he may deem reasonable.

The appellant contended that under that provision police could seize and detain a vehicle for the purpose of investigation for a period not exceeding forty-eight hours. Anyway, that period could be extended indefinitely if there is a charge being preferred against any person in respect of the vehicle. When there is no charge being preferred then the said vehicle has to be released after forty-eight hours unless it is referred to the magistrate under s. 413 of the Criminal

Procedure Code. In the present appeal the said vehicle was detained for more than forty-eight hours and it was not referred to the magistrate under s. 413 of the Criminal Procedure Code. Section 413 of the Criminal Procedure Code provides as follows:

> 413. Procedure by police on seizure of property.
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> (1) The seizure or finding by any police officer of property taken under section 20 or alleged or suspected to have been stolen or found under circumstances which create suspicion of the commission of any offence shall be forthwith reported to a Magistrate, who shall make such order as he thinks fit respecting the delivery of such property to the person entitled to the possession thereof, or, if such person cannot be ascertained, respecting the custody and production of such property.
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> (2) If the person so entitled is known the Magistrate may order the property to be delivered to him on such conditions, if any, as the Magistrate thinks fit, and shall in such case cause a notice to be served on such person informing him of the terms of the order and requiring him to take delivery of the property within such period from the date of the service of the notice (not being less than forty-eight hours) as the Magistrate may in such notice prescribe.
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> (3) If such person is unknown the Magistrate may direct that the property be detained in police custody, and the Chief Police Officer shall in such case issue a public notification specifying the articles of which the property consists and requiring any person who has any claim within six months from the date of such public notification.
>
> Provided that, where it is shown to the satisfaction of the Magistrate that such property is of no appreciable value, or that its value is so small as, in the opinion of the Magistrate, to render impracticable the sale, as hereinafter provided, of such property, or as to make its detention in police custody unreasonable in view of the expense or inconvenience that would thereby be involved, the Magistrate may order such property to be destroyed or otherwise disposed of, either on the expiration of such period after the publication of the notification above referred to as he may determine or forthwith as he thinks fit.
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> (4) (Not relevant).

We agree with the contention of the learned counsel for the appellant that the said vehicle had been detained by the police after more than forty-eight hours after it was seized. After the forty-eight hours had expired the police did nothing to legalise the detention under s. 413 of the Criminal Procedure Code because they did not produce the said vehicle before the magistrate for the magistrate to make the necessary order. As such it is clear to us that the continued detention of the said vehicle after the forty-eight hours under the Police Act was illegal.

In our view the learned judge had erred when he found that the continued detention to be valid and legal and in his judgment he said:

> ... Mahkamah enggan membuat sebarang perisytiharan mengenai motokar itu apabila terdapat alternative remedy seperti yang diperuntukkan di bawah Seksyen 413 Kanun Acara Jenayah di mana seorang Majistret boleh membuat enquirynya dan meluluskan motokar itu kepada Plaintif dengan terma tertentu atau di bawah Seksyen 12(1) Akta Pengangkutan Jalan di mana Ketua Pengarah atau Pengarah boleh memeriksa motokar itu dan menentusahkan maklumat sebenar mengenainya dan membuat pembetulan kepada Kad Pendaftaran kereta itu. ...

With the greatest respect to his Lordship, what was stated by him is if the said vehicle is referred to the magistrate. In the present appeal it is clear to us s. 413 of the Criminal Procedure Code is not an alternative remedy available to the appellant. It is a provision empowering the police to continue detaining a vehicle after the forty-eight hours if no person has been charged in respect of that vehicle. That section does not give any right to any individual including the undisputed owner to move the magistrate to grant him the possession of the said vehicle. At the most he could only request the police to set s. 413 of the Criminal Procedure Code in motion to refer the said vehicle to a magistrate for the necessary to be made. In the present appeal the appellant did precisely that when his solicitors wrote a letter dated 3 October 1994 requesting the police to refer the matter to the magistrate under s. 413 of the Criminal Procedure Code. Together with that letter were copies of the relevant documents showing that the appellant was an innocent *bona fide* purchaser of the said vehicle. Despite that the police failed to refer the matter to the magistrate and continued to detain the said vehicle. It is obvious to us that the learned judge erred when he dismissed the appellant's claim and said what he had said in the passage cited above. It is obvious to us that there was no remedy available to him under s. 413 of the Criminal Procedure Code when the police refused to refer the matter to the magistrate. The only remedy to him is to prefer a civil claim, claiming the said vehicle to be his and this is precisely what he had done.

In respect of s. 12(1) of the Road Transport Act cited by the learned judge in the passage above, it is clear to us that the power given to the Director General or a Director therein is only to correct the particulars in the registration book pertaining to the said vehicle and not the determination of the ownership of the said vehicle. In the present appeal though there was suspicion on the genuineness of the particulars stated in the registration book because of the tampering of the engine and chassis numbers, there was no request made by the Director General or a Director to the appellant for the registration book to be produced whereby the particulars in that book could

be corrected or amended. As it is according to the registration book, the appellant is the registered owner of the said vehicle and remains as such until the registration book is amended or corrected. From the evidence there is no other claimant to the said vehicle and indeed the respondents conceded that there was no report of the said vehicle being stolen and that the police was unable to determine the original owner of the said vehicle even though they have established the original engine and chassis numbers.

From the evidence, it is clear to us that when the said vehicle was brought into West Malaysia from Sabah whereby a new registration number was given, there was a dispute that the engine and chassis numbers had been tampered with. As we have stated earlier, the first registered owner in West Malaysia appearing in the registration book is F & C Motor Sdn. Bhd. The second owner appearing therein is Dewarajoo a/l Gurusamy and the third name is Pritam Singh a/l Jag Singh. The fourth and final name appearing therein is the name of the appellant. No evidence had been adduced by the respondent that the appellant had in any way assisted or aided the first three registered owners in the registration of their names. In our view, the appellant is truly an innocent *bona fide* purchaser.

Another significant factor to be taken into consideration is that under the Act the said vehicle had to be brought in for inspection before the name of the new owner could be registered in the registration book. As such the said vehicle had been brought in three times to the Road Transport Department for inspection and yet that department failed to discover or determine that the engine and chassis numbers had been tampered with.

For the above reasons we are of the view that the appellant could not be blamed with the tampering. When the said vehicle was detained beyond the period permissible under the law, the detention is illegal and the appellant has every right to complain about it. The police have every opportunity to extend the detention of the said vehicle legally *viz*, under s. 413 of the Criminal Procedure Code but they failed to make use of that opportunity and they have to face the consequences. The appellant in order to protect his rights have instituted the present action and he has every right to do so because the detention beyond the forty-eight hours as provided for by the Police Act is totally unlawful.

The appellant have given evidence that he had suffered damages as a result of the unlawful detention of the said vehicle. He had requested for the said vehicle to be released to him on bond because the nature of his work requires him to travel to various places in Malaysia. That request was not entertained until 23 January 1995 when the said vehicle was released to the appellant on bond. There was no evidence to contradict this evidence and the evidence that the nature of work of the appellant required him to travel extensively.

For the above reasons we find that the appellant have suffered damages with the unlawful detention of the said vehicle. For that we will allow the appellant's claim for damages. Since the appellant have not quantified the damages and also on his own request that the damages be assessed we will allow the damages to be assessed by the senior assistant registrar of the High Court, Seremban.

For the above reasons we allow the appeal with costs here and below. We make the following order in respect of this appeal:

(a) a declaration that the appellant is the beneficial owner of vehicle number NAJ 1912;

(b) a declaration that the registration book of the said vehicle be recorded with the engine number as MA 1A5-571289 and the chassis number as CB 3-7036281;

(c) an order that the second respondent do issue the necessary road tax in respect of the said vehicle after the appellant had made the necessary payment in respect of the road tax and the insurance of the said vehicle taken;

(d) that the detention of the said vehicle by the police after the forty-eight hours was not in accordance with the law and therefore the appellant is entitled to claim damages against the first respondent which is to be assessed by the senior assistant registrar. Since the said vehicle was released to the appellant on 23 January 1995, the damages to be assessed is the period between 30 April 1994 to 23 January 1995. The interest for the assessed damages will attract interest at 8% per annum.